

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

<b>DANNY GONZALES</b>	§	
	§	
	§	
<b>v.</b>	§	<b>CIVIL ACTION NO. 2:16-cv-153</b>
	§	<b>JURY</b>
<b>NUECES COUNTY, TEXAS;</b>	§	
<b>JUSTIN NOLAND, <i>Individually</i>;</b>	§	
<b>DEPUTY PERALES, <i>Individually</i>;</b>	§	
<b>S. CHARLETON, <i>Individually</i>;</b>	§	
<b>J. MEDINA, <i>Individually</i>;</b>	§	
<b>J. VILLANUEVA, <i>Individually</i>; and</b>	§	
<b>A. MUÑOZ, <i>Individually</i></b>	§	

**PLAINTIFF'S FIRST AMENDED ORIGINAL COMPLAINT**

**TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT:**

**NOW COMES** Plaintiff, Danny Gonzales, bringing this his *Plaintiff's First Amended Original Complaint*, praying for damages against Nueces County, Texas, Justin Noland, *Individually*, Deputy Perales, *Individually*, S. Charleton, *Individually*, J. Medina, *Individually*, J. Villanueva, *Individually*, and A. Munoz, *Individually* who jointly and severally, denied Daniel Gonzales his rights guaranteed by the Constitution and laws of the United States of America and the State of Texas.

**I.**  
**JURISDICTION AND VENUE**

1. This court has jurisdiction over this action pursuant to 28 U.S.C. §1331 (federal question) and 28 U.S.C. §1343(3) (civil rights). This court also has supplemental jurisdiction pursuant to 28 U.S.C. §1367 to hear the state claims that will be set forth in this complaint. Venue is proper in the Southern District of Texas, Corpus Christi Division as this is the district where the claim arose in accordance with 29 U.S.C. §1391(b).

**II.**  
**PARTIES**

2. Plaintiff Danny Gonzales is and individual residents of the State of Texas.
3. Defendant Nueces County, Texas, (hereinafter “Defendant NUECES COUNTY”), is a political subdivision of the State of Texas, and can be served with summons upon NUECES COUNTY, Texas, Nueces County Judge Lloyd Neal, 901 Leopard Street, Corpus Christi, Texas 78401.
4. Defendant Justin Noland (hereinafter “Noland”) was, at all times material to this suit, an officer employed by the NUECES COUNTY SHERIFF’S DEPARTMENT. Each of the acts complained of herein arises from the conduct of Defendant while acting under color of state law, and was committed within the scope of his/her employment and authority with the NUECES COUNTY SHERIFF’S DEPARTMENT. Defendant Justin Noland may be served with summons at his/her place of employment, NUECES COUNTY SHERIFF’S DEPARTMENT, 901 Leopold St., Corpus Christi, Texas 78401.
5. Defendant Deputy Perales (hereinafter “Perales”) was, at all times material to this suit, an officer employed by the NUECES COUNTY SHERIFF’S DEPARTMENT. Each of the acts complained of herein arises from the conduct of Defendant while acting under color of state law, and was committed within the scope of his/her employment and authority with the NUECES COUNTY SHERIFF’S DEPARTMENT. Defendant Perales has waived service pursuant to Rule 4 and made an appearance in the case.
6. Defendant S. Charleton (hereinafter “Charleton”) was, at all times material to this suit, an officer employed by the NUECES COUNTY SHERIFF’S DEPARTMENT. Each of the acts complained of herein arises from the conduct of Defendant while acting under color of state law, and was committed within the scope of his/her employment and authority with the Nueces County Sheriff’s

Department. Defendant S. Charleton has waived service pursuant to Rule 4 and made an appearance in the case.

7. Defendant J. Medina (hereinafter “Medina”) was, at all times material to this suit, an officer employed by the NUECES COUNTY SHERIFF’S DEPARTMENT. Each of the acts complained of herein arises from the conduct of Defendant while acting under color of state law, and was committed within the scope of his/her employment and authority with the Nueces County Sheriff’s Department. Defendant Medina has waived service pursuant to Rule 4 and made an appearance in the case.

8. Defendant J. Villanueva (hereinafter “Villanueva”) was, at all times material to this suit, an officer employed by the NUECES COUNTY SHERIFF’S DEPARTMENT. Each of the acts complained of herein arises from the conduct of Defendant while acting under color of state law, and was committed within the scope of his/her employment and authority with the CORPUS CHRISTI POLICE DEPARTMENT. Defendant J. Villanueva has waived service pursuant to Rule 4 and made an appearance in the case.

9. Defendant A. Munoz (hereinafter “Munoz”) was, at all times material to this suit, an officer employed by the NUECES COUNTY SHERIFF’S DEPARTMENT. Each of the acts complained of herein arises from the conduct of Defendant while acting under color of state law, and was committed within the scope of his/her employment and authority with the CORPUS CHRISTI POLICE DEPARTMENT. Defendant A. Munoz has waived service pursuant to Rule 4 and made an appearance in the case.

**III.**  
**FACTS**

10. On or about May 8, 2014, Plaintiff was incarcerated in the Nueces County Jail. Defendant Noland had Plaintiff standing against a wall and Defendant Noland pulled Plaintiff and kneed Plaintiff in the face. The force of Defendant Noland pulling Plaintiff caused Plaintiff's head to hit Defendant Noland in his face causing Defendant Noland to receive a busted lip. During this incident, Due to the incident, Plaintiff received a broken jaw.

11. Thereafter on or about May 13, 2014, while incarcerated in the Nueces County Jail, Plaintiff was in his cell when Defendants Charleton, Medina, Villanueva, and Munoz entered Plaintiff's cell and brutally beat Plaintiff by kicking and hitting him throughout his head, face and body. Due to the beating, Plaintiff suffered bruising throughout his body and a laceration above his left eye.

12. Thereafter on or about June 16, 2014, while incarcerated in the Nueces County Jail, Defendant Noland once again brutally beat Plaintiff in his cell and slammed Plaintiff's head against the wall of his cell. However, this time Defendant Noland enlisted the help of Defendant Perales. During this incident, Plaintiff received a broken nose, a laceration on his cheekbone, a busted eardrum, busted eyebrow bone and laceration to his left eye.

13. As a result of the Defendants' actions, Plaintiff sustained numerous injuries to his body, including, but not limited to, bruising and abrasions about his body, a broken jaw, a broken nose, a laceration on his cheekbone, a busted eardrum, busted eyebrow bone and laceration to his left eye.

14. Plaintiff is informed and believe, and thereupon allege that in committing said acts and/or omissions, each individual Defendant was the agent and/or employee of Defendant County and was acting within such agency and employment and that each Defendant was acting under color of state law.

15. Moreover, the officers' acts amount to an excessive and/or unnecessary use of force. Said excessive/unnecessary use of force is objectively unreasonable as no reasonable police officer and/or law enforcement officer given the same or similar circumstances would have initiated such a brutal and life threatening attack on any person seized and in the position of Plaintiff who was in custody and/or control of law enforcement.

16. To the extent necessary if Plaintiff is shown to be an "inmate" subject to Eighth Amendment protections, he would plead that any of the actions delineated herein were performed maliciously and sadistically, for the very purpose of causing Plaintiff harm and that such actions caused Plaintiff to suffer some harm.

17. At all pertinent times, Defendant Nueces County (by and though the Nueces County Sheriff's Department) authorized and ratified the wrongful and tortuous acts and/or omissions of its officers

**IV.**  
**FIRST CLAIM FOR RELIEF -- §1983**

18. The allegations contained in Paragraphs 10 through 17 are herein incorporated by reference, the same as if fully set forth verbatim for any and all purposes of this pleading.

19. **Section 1983.** The Civil Rights Act of 1871, now codified as 42 U.S.C. § 1983 as federal law provides: "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any laws, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 42 U.S.C. § 1983.

20. The state action requirement for standing under 42 U.S.C. § 1983 has more commonly been

referred to as "color of state law," from the statute itself. Plaintiff is informed and believes, and thereupon alleges that in committing said acts and/or omissions, each Defendant was the agent and employee of each other Defendant and was acting within such agency and employment and that each Defendant was acting under color of state law.

21. 42 U.S.C. § 1983 requires that the conduct complained of must have deprived the person of some privilege or immunity secured by the Constitution or laws of the United States. As such, Plaintiff alleges that Defendants, jointly and/or severally deprived him of his Fourth Amendment rights and those rights, privileges, and immunities secured by the Fourth, Eighth and/or Fifth Amendments to the Constitution incorporated and applied to the states through the Fourteenth Amendment. Defendants violated this provision by the following actions, *inter alia*, and/or omissions:

- a) by using excessive force in the course of Defendants' custody of Plaintiff, in violation of the Fourth Amendment and its "reasonableness" standard. Plaintiff therefore pleads that Defendants' used excessive and/or unnecessary force. Said actions resulted directly and only from the use of force that was clearly excessive to the need, and the excessiveness of which was objectively unreasonable; or
- b) in the event it is shown Plaintiff is entitled to Eighth Amendment protections, by using force maliciously and sadistically, for the very purpose of causing Plaintiff harm and that such actions caused Plaintiff to suffer some harm; or
- c) by failing to intervene, where such intervention would have prevented the violations and/or injuries of Plaintiff.

22. **§ 1983 - Excessive Force.** Plaintiff pleads that Defendants used excessive force and/or unnecessary in the course of the officers' supposed arrest, and/or investigatory stop, and/or other "seizure" of a free citizen, such as Plaintiff in violation of the Fourth Amendment and its "reasonableness" standard. Plaintiff therefore pleads that he was unlawfully assaulted and physically harmed by Defendants. Said actions resulted directly and only from the use of force that was clearly excessive to the need, and the excessiveness of which was objectively

unreasonable.

23. Such actions and/or omissions are "objectively unreasonable" in light of the facts and circumstances confronting them without regard to their underlying intent or motivation. Clearly, careful attention to the facts and circumstances of this particular case demonstrates the unreasonableness of said actions. For these reasons, it is objectively unreasonable for said officers to have used excessive and unnecessary force upon Plaintiff who was otherwise in custody. To the extent necessary if Plaintiff is shown to be an "inmate" subject to Eighth Amendment protections, he would plead that any of the actions delineated herein were performed maliciously and sadistically, for the very purpose of causing Plaintiff harm and that such actions caused Plaintiff to suffer some harm.

24. **§ 1983 – Governmental (Municipal).** It is also well-established that municipalities are liable under 42 U.S.C. § 1983 for constitutional torts that are in compliance with the municipality's customs, practices, policies or procedures. A municipality is liable for constitutional deprivations visited pursuant to governmental custom even though such custom has not received formal approval through the body's official decision making channels. In this case, Nueces County is liable because it sanctioned the custom, practice and/or policy or procedure of illegal searches, illegal seizures, excessive force and/or violating their rights. Defendants' actions were a customary practice and/or policy or procedure that was sanctioned by Nueces County out of which deprived Plaintiff of his civil rights by statute and by both the Texas and United States Constitutions. Liability for Nueces County is established under §1983 because the use of excessive and/or unnecessary force, with little or no justification, is a persistent, widespread practice of County employees -- namely police officers -- that, although not authorized by officially adopted policy, is so common and well settled as to constitute a custom that fairly represents official

municipal policy. Nueces County has actual or constructive knowledge of this practice, custom, and/or policy or procedure and sufficiently numerous prior incidents of police officers using excessive and/or unnecessary force upon citizens establishes custom and accession to that custom by the County's policy makers. Nueces County's unspoken policy of assaulting citizens is a decision that reflects deliberate indifference to the risk that a violation of a particular constitutional or statutory rights will follow the decision. In the alternative, Nueces County is liable under §1983 for failure to adopt a policy precluding officers from using excessive and/or unnecessary force upon citizens because such failure to adopt such a policy is one of intentional choice.

25. Moreover, Nueces County is liable for inadequate training of police officers under §1983. Liability attaches to the Nueces County because the County's failure to train amounts to deliberate indifference to the rights of the persons with whom the police come in contact. In particular, Plaintiff alleges that the training program in relation to the tasks the particular officers must perform is inadequate in the respect that the program fails to teach new police persons that using excessive and/or unnecessary force on citizens violates citizens' constitutional rights. As such, the deficiency in training actually caused Defendants to violate Plaintiff's constitutional rights.

26. To the extent helpful, Plaintiff would also plead as illustrative of the use of force in the Nueces County Jail the following, *inter alia*, sustained incidents:

2008-IA-001 Conduct Unbecoming  
2009-IA-004 Rules Violation  
1992-IA-044 Conduct Unbecoming  
1996-IA-030 Conduct Unbecoming  
1996-IA-037 Conduct Unbecoming  
1996-IA-037 Conduct Unbecoming  
1996-IA-045 Conduct Unbecoming  
1997-IA-010 Conduct Unbecoming  
1997-IA-013 Conduct Unbecoming  
1997-IA-013 Conduct Unbecoming  
1997-IA-028 Conduct Unbecoming  
1997-IA-034 Conduct Unbecoming

1997-IA-039 Conduct Unbecoming  
1997-IA-043 Conduct Unbecoming  
1997-IA-044 Conduct Unbecoming  
1997-IA-071 Conduct Unbecoming  
1997-IA-100 Conduct Unbecoming  
1997-IA-100 Conduct Unbecoming  
1998-IA-002 Conduct Unbecoming  
1998-IA-069 Conduct Unbecoming  
1998-IA-070 Conduct Unbecoming  
1998-IA-072 Conduct Unbecoming  
1998-IA-075 Conduct Unbecoming  
1999-IA-005 Conduct Unbecoming  
1999-IA-036 Conduct Unbecoming  
1999-IA-038 Conduct Unbecoming  
1999-IA-044 Conduct Unbecoming  
1999-IA-044 Conduct Unbecoming  
1999-IA-048 Conduct Unbecoming  
1999-IA-051 Conduct Unbecoming  
1999-IA-052 Conduct Unbecoming  
1999-IA-052 Conduct Unbecoming  
1999-IA-055 Conduct Unbecoming  
1999-IA-063 Conduct Unbecoming  
2005-IA-006 Conduct Unbecoming  
2005-IA-063 Conduct Unbecoming  
2006-IA-001 Conduct Unbecoming  
2006-IA-025 Conduct Unbecoming  
2007-IA-003 Conduct Unbecoming  
2007-IA-003 Conduct Unbecoming  
1996-IA-074 Excessive Force  
1996-IA-075 Excessive Force  
1997-IA-008 Excessive Force  
1997-IA-031 Excessive Force  
1997-IA-032 Excessive Force  
1997-IA-056 Excessive Force  
1997-IA-065 Excessive Force  
1998-IA-053 Excessive Force  
1998-IA-056 Excessive Force  
1998-IA-056 Excessive Force  
1998-IA-056 Excessive Force  
1998-IA-067 Excessive Force  
1999-IA-021 Excessive Force  
1999-IA-024 Excessive Force  
1999-IA-029 Excessive Force  
1999-IA-059 Excessive Force  
2000-IA-028 Excessive Force  
2000-IA-034 Excessive Force

2000-IA-034 Excessive Force  
2000-IA-035 Excessive Force  
2000-IA-009 Excessive Force  
2000-IA-009 Excessive Force  
2000-IA-009 Excessive Force  
2000-IA-012 Excessive Force  
1991-IA-023 Excessive Force  
2000-IA-001 Excessive Force  
2009-IA-003 Excessive Force  
2009-IA-005 Excessive Force  
2000-IA-005 Improper Use of Police Authority  
2000-IA-008 Improper Use of Police Authority  
1992-IA-020 Inmate Injury  
1998-IA-061 Insubordination  
1991-IA-006 Major Rule Infraction  
1991-IA-010 Major Rule Infraction  
1991-IA-014 Major Rule Infraction  
1991-IA-028 Major Rule Infraction  
1991-IA-030 Major Rule Infraction  
1991-IA-033 Major Rule Infraction  
1991-IA-036 Major Rule Infraction  
1991-IA-042 Major Rule Infraction  
1992-IA-004 Major Rule Infraction  
1992-IA-004 Major Rule Infraction  
1992-IA-019 Major Rule Infraction  
1992-IA-022 Major Rule Infraction  
1996-IA-015 Misconduct  
1999-IA-039 Misconduct  
1999-IA-054 Misconduct  
1999-IA-054 Misconduct  
1999-IA-064 Misconduct  
2000-IA-015 Rudeness  
2005-IA-009 Rule Infraction  
2005-IA-011 Rule Infraction  
2005-IA-011 Rule Infraction  
2005-IA-012 Rule Infraction  
2005-IA-012 Rule Infraction  
2005-IA-012 Rule Infraction  
2005-IA-012 Rule Infraction  
2005-IA-013 Rule Infraction  
2005-IA-013 Rule Infraction  
2005-IA-013 Rule Infraction  
2005-IA-016 Rule Infraction  
2005-IA-020 Rule Infraction  
2005-IA-029 Rule Infraction  
2005-IA-030 Rule Infraction

2005-IA-031 Rule Infraction  
2005-IA-031 Rule Infraction  
2005-IA-032 Rule Infraction  
2005-IA-034 Rule Infraction  
2005-IA-034 Rule Infraction  
2005-IA-034 Rule Infraction  
2005-IA-036 Rule Infraction  
2005-IA-039 Rule Infraction  
2005-IA-043 Rule Infraction  
2005-IA-045 Rule Infraction  
2005-IA-048 Rule Infraction  
2005-IA-048 Rule Infraction  
2005-IA-049 Rule Infraction  
2005-IA-051 Rule Infraction  
2005-IA-051 Rule Infraction  
2005-IA-052 Rule Infraction  
2005-IA-056 Rule Infraction  
2005-IA-070 Rule Infraction  
2005-IA-070 Rule Infraction  
2006-IA-002 Rule Infraction  
2006-IA-002 Rule Infraction  
2006-IA-002 Rule Infraction  
2006-IA-009 Rule Infraction  
2006-IA-011 Rule Infraction  
2006-IA-012 Rule Infraction  
2006-IA-013 Rule Infraction  
2006-IA-016 Rule Infraction  
2006-IA-017 Rule Infraction  
2006-IA-017 Rule Infraction  
2006-IA-017 Rule Infraction  
2006-IA-022 Rule Infraction  
2006-IA-022 Rule Infraction  
2006-IA-024 Rule Infraction  
2006-IA-024 Rule Infraction  
2006-IA-024 Rule Infraction  
2006-IA-029 Rule Infraction  
2006-IA-035 Rule Infraction  
2006-IA-038 Rule Infraction  
2006-IA-039 Rule Infraction  
2006-IA-042 Rule Infraction  
2006-IA-045 Rule Infraction  
2006-IA-045 Rule Infraction  
2006-IA-048 Rule Infraction  
2006-IA-054 Rule Infraction  
2006-IA-054 Rule Infraction

2006-IA-055	Rule Infraction
2005-IA-001	Rule Violation
2005-IA-001	Rule Violation
2007-IA-004	Rules Violation
2007-IA-007	Rules Violation
2007-IA-008	Rules Violation
2007-IA-008	Rules Violation
2007-IA-008	Rules Violation
2007-IA-009	Rules Violation
2007-IA-013	Rules Violation
2007-IA-014	Rules Violation
2007-IA-014	Rules Violation
2007-IA-016	Rules Violation
2007-IA-017	Rules Violation
2007-IA-018	Rules Violation
2007-IA-021	Rules Violation
2008-IA-002	Rules Violation
2008-IA-004	Rules Violation
2008-IA-005	Rules Violation
2008-IA-006	Rules Violation
2008-IA-011	Rules Violation
2009-IA-003	Rules Violation
2009-IA-003	Rules Violation
2009-IA-006	Rules Violation
2008-IA-010	Rules Violation/Use of Force
1999-IA-027	Unnecessary Force
1999-IA-054	Unnecessary Force
2005-IA-005	Use of Force
2008-IA-007	Use of Force/Rules Violation
1991-IA-018	Verbal Abuse
1991-IA-027	Verbal Abuse
1992-IA-024	Verbal Abuse
1992-IA-003	Violation of Law
1992-IA-015	Violation of Law
2005-IA-059	Rule Infraction
1997-IA-041	Excessive Force
1999-IA-025	Excessive Force
2009-IA-001	Rules Violation
2009-IA-001	Rules Violation
2009-IA-001	Rules Violation
2006-IA-019	Rule Infraction
2006-IA-067	Rule Infraction

Further, Plaintiff would show the following cases, *inter alia*, in which claims of abuse and/or excessive force were not sustained and/or no conclusion reached when such should have been:

1998-IA-030 Excessive Force  
1999-IA-046 Custodial Death  
1995-IA-066 Custodial Death  
1996-IA-052 Custodial Death  
1996-IA-081 Custodial Death  
1994-IA-071 Excessive Force  
1994-IA-071 Excessive Force  
1994-IA-071 Excessive Force  
1994-IA-072 Excessive Force  
1994-IA-077 Excessive Force  
1994-IA-078 Excessive Force  
1994-IA-081 Excessive Force  
1994-IA-085 Excessive Force  
1994-IA-086 Excessive Force  
1994-IA-086 Excessive Force  
1994-IA-087 Excessive Force  
1994-IA-087 Excessive Force  
1994-IA-088 Excessive Force  
1994-IA-088 Excessive Force  
1994-IA-098 Excessive Force  
1994-IA-100 Excessive Force  
1994-IA-110 Excessive Force  
1995-IA-003 Excessive Force  
1995-IA-004 Excessive Force  
1995-IA-005 Excessive Force  
1995-IA-017 Excessive Force  
1995-IA-017 Excessive Force  
1995-IA-018 Excessive Force  
1995-IA-018 Excessive Force  
1995-IA-021 Excessive Force  
1995-IA-021 Excessive Force  
1995-IA-021 Excessive Force  
1995-IA-021 Excessive Force  
1995-IA-024 Excessive Force  
1995-IA-037 Excessive Force  
1995-IA-037 Excessive Force  
1995-IA-037 Excessive Force  
1995-IA-040 Excessive Force  
1995-IA-040 Excessive Force  
1995-IA-040 Excessive Force  
1995-IA-050 Excessive Force  
1995-IA-056 Excessive Force  
1995-IA-056 Excessive Force

1995-IA-058	Excessive Force
1995-IA-059	Excessive Force
1995-IA-059	Excessive Force
1995-IA-062	Excessive Force
1995-IA-067	Excessive Force
1995-IA-069	Excessive Force
1995-IA-070	Excessive Force
1995-IA-078	Excessive Force
1995-IA-085	Excessive Force
1995-IA-093	Excessive Force
1995-IA-100	Excessive Force
1995-IA-108	Excessive Force
1995-IA-108	Excessive Force
1995-IA-108	Excessive Force
1996-IA-005	Excessive Force
1996-IA-007	Excessive Force
1996-IA-007	Excessive Force
1996-IA-027	Excessive Force
1996-IA-031	Excessive Force
1997-IA-089	Excessive Force
1997-IA-089	Excessive Force
1998-IA-003	Excessive Force
1998-IA-003	Excessive Force
1998-IA-004	Excessive Force
1998-IA-004	Excessive Force
1998-IA-004	Excessive Force
1998-IA-007	Excessive Force
1998-IA-024	Excessive Force
1998-IA-028	Excessive Force
1998-IA-029	Excessive Force
1998-IA-029	Excessive Force
1998-IA-029	Excessive Force
1998-IA-031	Excessive Force
1998-IA-035	Excessive Force
1998-IA-036	Excessive Force
1998-IA-036	Excessive Force
1998-IA-042	Excessive Force
1999-IA-009	Excessive Force
1999-IA-009	Excessive Force
1999-IA-009	Excessive Force
1999-IA-031	Excessive Force

1999-IA-031 Excessive Force  
1999-IA-037 Excessive Force  
1999-IA-037 Excessive Force  
1999-IA-042 Excessive Force  
1999-IA-042 Excessive Force  
1999-IA-053 Excessive Force  
1999-IA-060 Excessive Force  
2000-IA-019 Excessive Force  
1991-IA-007 Excessive Force  
1991-IA-008 Excessive Force  
1991-IA-009 Excessive Force  
1991-IA-009 Excessive Force  
1991-IA-009 Excessive Force  
1991-IA-009 Excessive Force  
1991-IA-021 Excessive Force  
2000-IA-016 Excessive Force  
2000-IA-016 Excessive Force  
2000-IA-016 Excessive Force  
1991-IA-004 Excessive Force  
1991-IA-004 Excessive Force  
1991-IA-004 Excessive Force  
1991-IA-004 Excessive Force  
1991-IA-025 Excessive Force  
1991-IA-032 Excessive Force  
1992-IA-005 Excessive Force  
1992-IA-005 Excessive Force  
1992-IA-007 Excessive Force  
1992-IA-007 Excessive Force  
2000-IA-006 Excessive Force  
2000-IA-013 Excessive Force  
2000-IA-013 Excessive Force  
1997-IA-098 Excessive Force  
1999-IA-032 Excessive Force  
1999-IA-032 Excessive Force  
2007-IA-005 Excessive Force  
2007-IA-005 Excessive Force  
2007-IA-005 Excessive Force  
2009-IA-007 Excessive Use of Force

2009-IA-007 Excessive Use of Force  
2009-IA-007 Excessive Use of Force  
2007-IA-011 Use of Force  
2007-IA-012 Use of Force  
2007-IA-015 Use of Force  
2008-IA-003 Use of Force/Rules Violation  
1996-IA-023 Excessive Force  
1996-IA-023 Excessive Force  
1996-IA-023 Excessive Force  
1996-IA-098 Deadly Force  
2000-IA-022 Excessive Force  
2000-IA-038 Excessive Force  
1999-IA-041 Excessive Force  
1999-IA-043 Excessive Force  
1999-IA-043 Excessive Force  
1999-IA-057 Excessive Force  
1999-IA-057 Excessive Force  
1997-IA-096 Excessive Force  
1996-IA-001 Excessive Force  
1996-IA-001 Excessive Force  
1996-IA-001 Excessive Force  
1996-IA-006 Excessive Force  
2006-IA-005 Excessive Force  
2006-IA-008 Excessive Force  
2006-IA-033 Excessive Force  
2009-IA-007 Excessive Use of Force  
2009-IA-007 Excessive Use of Force  
2009-IA-007 Excessive Use of Force  
1997-IA-047 Unnecessary Force  
2005-IA-003 Use of Force  
2005-IA-004 Use of Force  
2005-IA-008 Use of Force  
2005-IA-015 Use of Force  
2005-IA-025 Use of Force  
2005-IA-025 Use of Force  
2005-IA-025 Use of Force  
2005-IA-053 Use of Force  
2005-IA-067 Use of Force  
2005-IA-068 Use of Force  
2005-IA-068 Use of Force  
2006-IA-023 Use of Force  
2010-IA-002 Use of Force  
2010-IA-002 Use of Force  
2010-IA-002 Use of Force  
2008-IA-008 Use of Force/Rules Violation

1994-IA-027 Excessive Force  
1996-IA-017 Excessive Force  
1996-IA-022 Excessive Force  
1996-IA-022 Excessive Force  
1996-IA-022 Excessive Force  
1996-IA-025 Excessive Force  
1996-IA-025 Excessive Force  
1996-IA-032 Excessive Force  
1996-IA-041 Excessive Force  
1996-IA-043 Excessive Force  
1996-IA-043 Excessive Force  
1996-IA-048 Excessive Force  
1996-IA-065 Excessive Force  
1996-IA-084 Excessive Force  
1996-IA-084 Excessive Force  
1996-IA-092 Excessive Force  
1996-IA-092 Excessive Force  
1996-IA-092 Excessive Force  
1997-IA-002 Excessive Force  
1997-IA-004 Excessive Force  
1997-IA-007 Excessive Force  
1997-IA-007 Excessive Force  
1997-IA-009 Excessive Force  
1997-IA-009 Excessive Force  
1997-IA-014 Excessive Force  
1997-IA-019 Excessive Force  
1997-IA-024 Excessive Force  
1997-IA-042 Excessive Force  
1997-IA-055 Excessive Force  
1997-IA-057 Excessive Force  
1997-IA-061 Excessive Force  
1997-IA-061 Excessive Force  
1997-IA-063 Excessive Force  
1997-IA-063 Excessive Force  
1997-IA-067 Excessive Force  
1997-IA-080 Excessive Force  
1997-IA-092 Excessive Force  
1997-IA-093 Excessive Force  
1998-IA-020 Excessive Force  
1998-IA-020 Excessive Force  
1998-IA-021 Excessive Force  
1998-IA-021 Excessive Force  
1998-IA-026 Excessive Force

1998-IA-033 Excessive Force  
1998-IA-033 Excessive Force  
1998-IA-033 Excessive Force  
1998-IA-033 Excessive Force  
1998-IA-040 Excessive Force  
1998-IA-040 Excessive Force  
1998-IA-051 Excessive Force  
1998-IA-058 Excessive Force  
1998-IA-065 Excessive Force  
1999-IA-001 Excessive Force  
1999-IA-008 Excessive Force  
1999-IA-011 Excessive Force  
1999-IA-011 Excessive Force  
1999-IA-011 Excessive Force  
1999-IA-028 Excessive Force  
1999-IA-035 Excessive Force  
1999-IA-062 Excessive Force  
1999-IA-066 Excessive Force  
1999-IA-075 Excessive Force  
2000-IA-020 Excessive Force  
2000-IA-036 Excessive Force  
2000-IA-039 Excessive Force  
2002-IA-051 Excessive Force  
2003-IA-012 Excessive Force  
2003-IA-013 Excessive Force  
2003-IA-013 Excessive Force  
2003-IA-039 Excessive Force  
2003-IA-039 Excessive Force  
1991-IA-016 Excessive Force  
1991-IA-024 Excessive Force  
1991-IA-019 Excessive Force  
1992-IA-031 Excessive Force  
1992-IA-042 Excessive Force  
1998-IA-071 Excessive Force  
1998-IA-071 Excessive Force  
2000-IA-007 Excessive Force  
2000-IA-014 Excessive Force  
1997-IA-087 Excessive Force Threat  
1996-IA-055 Mistreatment of Inmate  
1999-IA-067 Excessive Force  
1999-IA-068 Excessive Force  
1999-IA-069 Excessive Force  
1999-IA-075 Excessive Force  
2000-IA-042 Excessive Force  
2001-IA-002 Excessive Force  
2001-IA-003 Excessive Force

1999-IA-073 Excessive Force  
1996-IA-057 Excessive Force  
1998-IA-038 Excessive Force  
1997-IA-045 Excessive Force  
1997-IA-060 Custodial Death  
1997-IA-016 Excessive Force  
1998-IA-032 Excessive Force  
1998-IA-063 Excessive Force  
1999-IA-032 Excessive Force  
1999-IA-032 Excessive Force  
1998-IA-066 Excessive Force  
1998-IA-066 Excessive Force  
1996-IA-040 Excessive Force  
1996-IA-040 Excessive Force  
1996-IA-051 Excessive Force  
1996-IA-051 Excessive Force  
1996-IA-068 Excessive Force  
1996-IA-097 Excessive Force  
1997-IA-012 Excessive Force  
1997-IA-029 Excessive Force  
1997-IA-082 Excessive Force  
1998-IA-010 Excessive Force  
1998-IA-041 Excessive Force  
1998-IA-062 Excessive Force  
1999-IA-047 Excessive Force  
2000-IA-027 Excessive Force  
2000-IA-027 Excessive Force  
1991-IA-001 Excessive Force  
1992-IA-037 Excessive Force  
1999-IA-072 Excessive Force  
2000-IA-010 Excessive Force  
1998-IA-005 Excessive Force  
1996-IA-056 Mistreatment of Inmate  
1996-IA-013 Excessive Force  
2006-IA-031 Excessive Force  
2006-IA-031 Excessive Force  
2006-IA-061 Excessive Force  
1996-IA-012 Excessive Force  
1996-IA-080 Mistreatment of Inmate  
1999-IA-050 Excessive Force  
1993-IA-024 Excessive Force  
1993-IA-033 Excessive Force  
1993-IA-034 Excessive Force  
1993-IA-034 Excessive Force  
1993-IA-037 Excessive Force  
1993-IA-037 Excessive Force

1993-IA-057 Excessive Force  
1994-IA-006 Excessive Force  
1994-IA-009 Excessive Force  
1994-IA-013 Excessive Force  
1994-IA-013 Excessive Force  
1994-IA-013 Excessive Force  
1994-IA-013 Excessive Force  
1994-IA-016 Excessive Force  
1994-IA-024 Excessive Force  
1994-IA-030 Excessive Force  
1994-IA-031 Excessive Force  
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1994-IA-032 Excessive Force  
1994-IA-032 Excessive Force  
1994-IA-035 Excessive Force  
1994-IA-036 Excessive Force  
1994-IA-044 Excessive Force  
1994-IA-046 Excessive Force  
1994-IA-046 Excessive Force  
1994-IA-047 Excessive Force  
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1994-IA-061 Excessive Force  
1994-IA-067 Excessive Force  
1994-IA-067 Excessive Force  
1994-IA-069 Excessive Force  
1994-IA-069 Excessive Force  
1994-IA-075 Excessive Force  
1994-IA-102 Excessive Force  
1994-IA-104 Excessive Force  
1995-IA-070 Excessive Force  
1998-IA-074 Excessive Force  
1998-IA-076 Excessive Force  
1992-IA-035 Excessive Force  
1992-IA-035 Excessive Force  
1992-IA-012 Excessive Force  
1992-IA-021 Excessive Force  
1992-IA-030 Excessive Force  
1992-IA-030 Excessive Force

1992-IA-045 Excessive Force

27.     **§ 1983 - Qualified Good Faith Immunity** (applicable ONLY if Fourth Amendment – as opposed to Eighth Amendment – applies). Qualified good faith immunity stands for the proposition that even though the civil rights of a complainant may have been violated, if the officer engaged in the conduct in good faith there is no liability for that individual. The standard by which an officer's entitlement to good faith qualified immunity is objective not subjective. Defendants' actions judged by such objective standard protects, "all but the plainly incompetent or those who knowingly violate the law." The determination of objective reasonableness must be based on a version of the facts most favorable to the Plaintiff. To the extent that credibility questions exist, a fact-finder continues to be necessary. In the instant case, Plaintiff alleges that Defendants are not entitled to claim "qualified good faith immunity." Importantly, Defendants never had a good faith belief in their conduct because they acted in a manner demonstrating that they were plainly incompetent and knowingly violated Plaintiff's civil rights. When the facts are taken in the light most favorable to the Plaintiff, it is clear that Plaintiff was merely standing against the wall, doing absolutely nothing when he was assaulted. Any reason given by Defendants for their unlawful actions and/or omissions does not warrant the application of qualified good faith immunity because they were never in danger nor were any other persons in the vicinity in danger of Plaintiff. Moreover, Defendants' actions were objectively unreasonable in the sense that they knew or reasonably should have known that the actions taken within their authority or responsibility would violate the constitutional rights of Plaintiff.

V.

**SECOND CLAIM FOR RELIEF**  
**Texas - - Assault & Battery**

28.     The allegations set forth in Paragraphs 10 through 17 are herein incorporated by reference,

the same as if fully set forth verbatim for any and all purposes of this pleading. Furthermore, the claims brought by Plaintiff under this section only apply to the individual Defendants. Any reference to “Defendant(s)” in this section only applies to the aforementioned individual Defendants and does not include Defendant County.

29. As a pendent state cause of action, at all times material and relevant herein, the individual Defendants, by acts and/or omissions and under color of state law did then and there by acts and/or omissions, intentionally, knowingly and/or recklessly caused severe personal injury to Plaintiff through uncontested physical contact with Plaintiff.

30. Under Texas law, the cause of action for excessive force is simply one for assault and battery. Consequently, Plaintiff alleges that the individual Defendants committed an assault upon him when they intentionally, knowingly, and/or recklessly forcibly grabbed Plaintiff and slammed his head against a wall. At no time did Plaintiff consent. Said assaultive conduct of the individual Defendants was committed intentionally, knowingly, and/or recklessly and was the proximate cause of bodily and emotional injuries to Plaintiff. Said injuries were the direct and immediate consequence of the individual Defendants’ wrongful acts and a natural and direct result of the assault.

31. At no time were the individual Defendants privileged to take the action as force was not necessary. Moreover, the individual Defendants’ assault and battery of Plaintiff was not objectively reasonable when balancing the amount of force used against the need for the force. Put differently, at no time was Plaintiff fleeing or about to flee, nor was anyone (including Defendants) ever in danger.

### **DAMAGES**

32. As a result of the foregoing unlawful and wrongful acts of Defendants, jointly and severally,

Plaintiff has been caused to suffer general damages which include but are not limited to the following: both physical and emotional injury, including but not limited to - - pain and suffering, emotional and mental distress, and personal humiliation and shock, along with severe emotional distress.

33. Said injuries have caused Plaintiff to incur special damages which include but are not limited to past medical expenses.

34. Pursuant to the Civil Rights Attorney's Fees Award Act, 42 U.S.C. §1988, a prevailing party in a §1983 case is entitled to recover his attorney's fees. Hence, Plaintiff further prays for all costs and attorney fees associated with bringing the present case to trial.

35. In addition, Plaintiff prays for punitive damages against the individual Defendants. Punitive damages are designed to punish and deter persons such as the individual Defendants who have engaged in egregious wrongdoing. Punitive damages may be assessed under § 1983 when a Defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally-protected rights of others. While municipal defendants are absolutely immune from § 1983 awards of punitive damages, such damages may be awarded against a public employee or official in their individual capacity. Therefore, Plaintiff alleges and prays for punitive damages against the individual Defendants, as such the individual Defendants actually knew that his conduct was unconstitutional, and/or was callously indifferent to its legality.

**WHEREFORE PREMISES CONSIDERED,** Plaintiff prays that upon trial of the merits, he recover compensatory damages against Defendants, jointly and severally; that Plaintiff also recover punitive damages against the individual Defendants in an amount to punish and/or deter and to make an example of those individual Defendant in order to prevent similar future conduct; and, that Plaintiff recover against each Defendant all reasonable and necessary attorney's fees,

court costs and expenses in regards to the present suit in litigation. Moreover, Plaintiff prays for all pre-judgement and post judgement interest that can be assessed against the Defendants in the event of recovery; and that Plaintiff recover against each Defendant any and all other general or specific relief to which he proves himself justly entitled.

Respectfully submitted,

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*Attorney for Plaintiff*

**NOTICE OF ELECTRONIC FILING**

The undersigned counsel hereby certifies that he has electronically submitted for filing a true and correct copy of the above and foregoing in accordance with the Electronic Case Files System of the Southern District of Texas on the 15<sup>t</sup> day of August, 2016.

/s/ Christopher J. Gale  
Christopher J. Gale

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 15<sup>st</sup> day of August, 2016, a true and correct copy of the above and foregoing has been sent to the following counsel of record by means indicated below:

Jenny Cron  
NUECES COUNTY ATTORNEY'S OFFICE  
901 Leopard St., Rm. 207  
Corpus Christi, Texas 78401

*Via E-File Notification*

/s/ Christopher J. Gale  
Christopher J. Gale

